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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**
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13 UNITED STATES OF AMERICA,
14 Plaintiff,
15 v.
16 PHILLIP ANDREW WELLER II,
17 Defendant.
18

Case No.: 12-cr-5154 W

**ORDER SETTING DEADLINE FOR
DEFENDANT'S MOTION TO
EXTEND THE DEADLINE TO FILE
A NOTICE OF APPEAL**

19 On September 11, 2018, this Court denied Defendant Phillip Andrew Weller II's
20 Motion to Correct Clerical Error Pursuant to Rule 36 of Fed. R. Crim. Pro. [Doc. 89], and
21 Motion to Reduce Sentence Under 18 USC 3582(c)(2) Due to Amendment 701 [Doc.
22 90]. (*See September 11, 2018 Order* [Doc. 92].) On October 4, 2018, Defendant filed a
23 Notice of Appeal. (*See Notice of Appeal* [Doc. 93].)

24 On October 10, 2018, the Ninth Circuit issued an order finding Defendant's Notice
25 of Appeal was untimely because it was filed more than 14 days from entry of this the
26 September 11, 2018 Order. The Ninth Circuit, however, remanded the case to this Court
27 for the limited purpose of providing Defendant with notice and an opportunity to do the
28 following:

1 request that the time for filing the notice of appeal be extended, for a period not to
2 exceed 30 days from the expiration of the time prescribed by Rule 4(b), upon a
3 finding of excusable neglect or good cause. *See* Fed. R. App. P. 4(b)(4); *United*
4 *States v. Ono*, 72 F.3d 101, 103 (9th Cir. 1995) (order); *United States v. Stolarz*,
547 F.2d 108 (9th Cir. 1976.).”

5 (See *October 10, 2018 Ninth Cir. Order* [Doc. 96].) Accordingly, Defendant is
6 **NOTIFIED** that he may file a motion requesting that the deadline for filing a notice of
7 appeal of the September 11, 2018 Order be extended for 30 days under Federal Rule of
8 Appellate Procedure 4(b)(4), which provides:

9 Upon a finding of excusable neglect or good cause, the district court may—
10 before or after the time has expired, with or without motion and notice—
11 extend the time to file a notice of appeal for a period not to exceed 30 days
12 from the expiration of the time otherwise prescribed by this Rule 4(b).

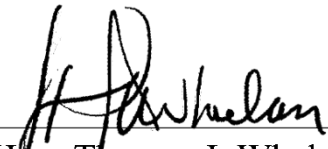
13 Fed. R. App. Pro. 4(b)(4). Defendant is **FURTHER NOTIFIED** that the motion for an
14 extension of time must be filed with this Court on or before **November 12, 2018**.

15 Pursuant to the Ninth Circuit’s order, the Clerk shall serve Defendant with a copy
16 of this order at the following address:

17 Reg. No. 35963-298
18 Federal Correctional Institution, P.O. Box 2000
19 Joint Base MDL, New Jersey 08640

20 **IT IS SO ORDERED.**

21 Dated: October 11, 2018

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23 _____
24 Hon. Thomas J. Whelan
25 United States District Judge
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